

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 42

An Act the better to facilitate Optional Commutation of the Tenure of Lands en roture, in the Seigniories and Fiefs in Lower Canada into that of franc-aleu roturier. (29th March, 1845.)

Whereas it is expedient to facilitate, when the parties find it to their mutual advantage, and optionally agree upon the terms, commutation of the tenure of Lands held en roture in the several Fiefs and Seigniories' [Seigneuries] in Lower Canada, into that of franc-aleu roturier, and the extinguishment of all Feodal dues, charges and incumbrances thereupon, as well in those Fiefs and Seigniories whereof the respective Seigniors or Proprietors may not already have commuted with the Crown in respect of its rights and interests therein, including also Fiefs and Seigniories in mortmain, as in those with respect to which a commutation by the Seigniors or Proprietors thereof with the Crown has been or shall be effected: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, "An Act to Re-unite the Provinces of Upper and Lower Canada and for the Government of Canada," and it is hereby enacted by the authority of the same, That whenever any Censitaire or owner of Land held en roture in any Fief or Seigniorie in that part of this Province known as Lower Canada, Fiefs and Seigniories in mortmain also included, shall be desirous to commute the Tenure thereof into the Tenure en franc-aleu roturier, and for this purpose shall have made and concluded an agreement, in writing before Notaries, with the Seignior or Proprietor of the Fief or Seigniorie wherein the land is situate, his Agent, Attorney, or other lawful representative, as to the value or indemnity to be given or paid to such Seignior or Proprietor, for the release of the land in question from all such Feodal or Seigniorial dues, charges and incumbrances affecting the same, and its commutation from the Tenure en roture into the Tenure en franc-aleu roturier, and such agreement in writing shall have been duly registered in the Registry Office of the County wherein the land is situate, the commutation, of the Tenure of such land or lands en roture into the Tenure en franc-aleu roturier, shall, to all intents and purposes, be held and taken to be perfect and accomplished, and the Tenure of the said land or lands forever thereafter deemed and considered to be en franc-aleu roturier, and as such shall accordingly be disincumbered and free of all Feodal and Seigniorial dues, charges, liabilities and incumbrances of any and every kind and description whatsoever, for ever thereafter, as are the lands holden in free and common soccage in the Townships in Lower Canada.

II. And be it enacted, That the commutation money or indemnity agreed upon may, if it be the option and pleasure of the parties, remain secured, en titre de constitution de rente, a rente foncière, or otherwise, according to the stipulation between the parties, upon the land or real property, the tenure whereof shall have been so as aforesaid commuted, with the same privilege, ex causa, and as bailleur de fonds, and preference thereupon over all other hypothecary claims affecting the same, as such Seignior or Proprietor would bylaw be entitled to for the recovery of

any Seigniorial dues upon or arising out of such land previous to commutation of the tenure thereof.

III. And be it enacted, That each and every Seignior or Proprietor of any Fief or Seignior in this Province who, pursuant hereto, shall have commuted with respect to any land or lands in his Fief or Seignior, shall be held to give in to the Receiver General of the Province, in the course of the first ten days of January next after the commutation, an authentic copy of the Notarial agreement or Acte of each and every such commutation that he shall during the preceding year have agreed to, accompanied by an attestation on oath (which oath any and every Jus-tice of the Peace is, when demanded, hereby authorized and required to administer,) endorsed upon the same, that such Notarial Acte specifies the whole and sole terms upon which the commutation mentioned in it has been made, and each and every Seignior or Proprietor having so accounted for the commutations with respect to any land or lands, or other real property in his Fief or Seignior, shall, in conformity-thereto, be liable to pay over on or before the first day of July next ensuing the actual receipt of the sum principal agreed upon as the commutation money, (unless the same shall, as hereinafter provided, be remitted to him,) into the hands of the Receiver General of the Province for the public uses thereof, an amount equal to one-twentieth of, or five per cent upon the total amount of com-mutation money or indemnity he shall have received or agreed upon as aforesaid, as the proportion thereof, due to the Crown as Seignior suzerain ax dominant.

IV. And be it enacted, That each and every Seignior or Proprietor of any Arrière Fief in this Province holding under any dominant Seignior or Seigniors other than the Crown, who, pursuant hereto, shall have commuted with respect to any land in his Arrière Fief shall be held to give in to his said Seignior dominant, in the course of the first ten days of January next after the commutation, an authentic copy of the Notarial agreement or Acte of each and every such commutation that he shall, during the preceding year, have agreed to, accompanied by an attestation on oath, (which oath any and every Justice of the Peace is hereby authorized and required to administer,) indorsed upon the same, that such Notarial Acte specifies the whole and sole terms upon which the commutation mentioned in it has been made, and each and every Seignior or Proprietor pf any such Arrière Fief having so accounted for the commutations with respect to any land or lands or other real property in his Arriere Fief, shall, in conformity thereto, be liable to pay over on or before the first day of April then next ensuing, (unless the same shall have been remitted for the whole or in part to him by the Seignior dominant,) into the hands of the said Seignior dominant, an amount equal to one-fifth of the total commutation money or indemnity he shall have received or agreed upon as aforesaid, as the proportion thereof due to the said Seignior dominant.

V. And be it enacted, That the said Seignior dominant shall in like manner in his turn be liable to pay over on or before the first day of July then next ensuing (unless the same, as hereinafter mentioned, shall have been remitted to him,) into the hands of the Receiver General of the Province, for the public uses thereof, an amount equal to one-twentieth of the total amount of commutation money or indemnity to which, pursuant hereto, he shall be entitled, or shall have agreed to receive as the proportion or amount due him as Seignior dominant, and such Seignior dominant shall, at or before the time of paying over such sum of money to the Receiver General,

make an attestation under oath, (which oath any and every Justice of the Peace is hereby authorized and required to administer,) that the said sum of money is the one-fifth of the total amount of commutation money or indemnity by him received or agreed upon as such Seignior dominant: Provided always, that nothing in this and the next preceding Section shall extend or be construed to extend to prevent any Seignior or Proprietor of any Arrière Fief holding under any other Seignior to make and conclude an agreement meeting before Notaries with his said Seignior dominant, for the total extinction of all Feodal and Seigniorial dues, charges and incumbrances affecting the same, and belonging to such Seignior dominant, previous to commutation by him with his own Censitaires, and to agree and stipulate for the payment of a certain fixed sum, or for a rente constituée or rente foncière, or otherwise, as the commutation money or indemnity to such Seignior dominant for all his rights mid title therein; and such Seignior dominant shall, on receipt of such sum of money so agreed upon and stipulated for, be held to pay over to the Receiver General the one-twentieth part thereof at the same time, with the same formalities and with the same attestation on oath as hereinbefore mentioned and required: Provided always, that in all cases of immediate payment by the Seignior servant to the Seignior dominant, for the commutation agreed upon between them, or for the one-fifth part of the consideration of any commutation between the Seignior servant and his Censitaires, the Seignior servant shall, in the manner hereinafter provided in the like case as to Censitaires, deposit the amount coming to the Seignior dominant in the office of the Prothonotary, and with the like observances, and that the same proceedings shall be had thereupon as is in that case by this Act required, with the view of saving the rights of third parties, and with the like effects as respects the land, the tenure of which shall have been commuted.

VI. And be it enacted, That any Seignior or Proprietor of a Seignior having commuted, who shall neglect or refuse to transmit an authentic copy or copies of the Notarial agreement or agreements of any such commutation or commutations as aforesaid, within the appointed time according to the requirements of this Act, shall, for every such neglect or refusal, forfeit to Her Majesty, Her Heirs and Successors, double the sum which by reason of any and every such commutation he would, according to this Act, be liable for.

VII. And be it enacted, That it shall be lawful for the Governor, or person administering the Government of the Province for the time being, to remit, in all cases of commutation effected under this Act, if to encourage and facilitate the commutation hereby intended he shall see fit, the proportion hereinabove fixed as the indemnity which by reason of such commutation will be payable, and may be claimed on the part of the Crown; and in like manner it shall be lawful, if he see fit, whether in consideration of the loss or disuse of any Seigniorial rights from whatsoever cause, formerly appertaining to Fiefs or Seigniories in Lower Canada, or solely with a view to ease, expedite and promote the commutation intended by this Act, to abandon and give up to any Seignior or Proprietor of any such Fief or Seignior desirous of promoting a commutation of the tenure of lands within his Fief or Seignior, all claim to any and every indemnity as aforesaid, coming to, or that might be due or claimed on the part of the Crown, or to accept of a smaller proportion than that hereinabove (in the third section) mentioned as the indemnity to the Crown on such commutations, and such indemnity being abandoned and given up, or the sum determined and fixed as the indemnity to the Crown, being paid into the Treasury of the Province,

the Seignior or Proprietor in whose favour such abandonment shall have been made, or who shall have paid such indemnity, shall thereafter, in all time to come, be free to commute for any and all lands within his Fief or Seignior, without being therefor, or in respect to the same, in any manner accountable to the Crown.

VIII. And be it enacted, That all monies arising from the commutation of the tenure of any land under this Act, whether the same be paid to the Seignior as aforesaid, or remain as the principal of a rente constituée or rente foncière, or otherwise, shall be held to be immovable property by fiction, of law, and deemed to be propres belonging to any party, to whom the Seignior in which such land is situate shall be propre, and shall accordingly be subject to investment, and being so invested bona fide with a proper declaration of remploi, shall be substituted for the rights they represent, and shall have the same destination as such rights would have had.

IX. And whereas it is expedient, in the case where the Censitaire commuting for the tenure of any such land en roture into the tenure en franc-aleu roturier, shall prefer making immediate payment of the commutation money or indemnity agreed to be given to the Seignior or Proprietor aforesaid of the Fief or Seignior wherein the land is situate, to provide that due and reasonable notice of the commutation be given, to the end that all concerned, whose interests might in any wise be thereby prejudiced or affected, may avail themselves of such notice, and take their recourse accordingly; Be it therefore enacted, That the amount agreed upon by the Censitaire and Seignior as the indemnity to such Seignior for the commutation of tenure as aforesaid, of any land en roture in his Fief or Seignior into the tenure en franc-aleu roturier shall, when to be paid, be at the diligence of the Censitaire or land-owner deposited within thirty days next after the day of commutation, together with an authentic copy of the Notarial agreement or instrument in writing relating thereto, in the office of the Prothonotary of the Court of Queen's Bench for the District wherein the land is situate, (and of which deposit it shall be the duty of the Prothonotary to grant him Acte,) there to abide the order or judgment of the Court disposing thereof, in case any hypothecary claim or claims affecting the same shall arise and be presented before the said Court: Provided always, that such Seignior or Proprietor may be allowed to take up and retain the said commutation money or indemnity so deposited, on giving a bond (and for the taking of which bond the Prothonotary shall be entitled to a fee of one shilling and three pence, and no more,) or security to the satisfaction of any one of the Judges of the said Court that the amount will, within twenty days next after the rendering of any order or judgment by the said Court, (whether notice of such order or judgment be or be not served upon or given him,) directing the distribution and payment thereof to any hypothecary claimant or claimants upon the same, be forthcoming and repaid into the Prothonotary's office, to be disposed of according to such order or judgment.

X. And be it enacted, That it shall be the duty of the Prothonotary to cause notice to be given three times at least in the course of the four months next alter the day of such deposit aforesaid, in the English and French languages, in the Gazette and in some other newspaper or newspapers to be named by the Court, or any of the Judges thereof, printed in the District wherein the land commuted is situate, of such commutation; and by criée or proclamation as in the case of décrêt or Sheriff's sale three times during the aforesaid term, at the Church-door of the Parish wherein as aforesaid such land is situate, immediately after the issue of divine service thereat in the forenoon,

and if there be no Church, then at the most public place in the Seignior, designating the land or lands or other real property, and requiring all persons having any hypothecary claim or claims that may in any wise affect such commutation money or indemnity, to present and file the same at his office within the fifteen days next after the expiration of the said four months notice, to the end that the same be taken into consideration by the Court and disposed of in due course of law; and that in default of presenting and filing the same within the appointed time, all such claims will thereafter be foreclosed; and accordingly all claims that might by law in any wise have affected such commutation money or indemnity, that shall not be presented within the time appointed, shall be foreclosed, and those presented collocated for payment according to their order of priority or privilege, by judgment of the Court, and be paid from and out of the said amount of commutation money, in so far as the same shall suffice therefor.

XI. And be it enacted, That for the filing of such Notarial agreement or instrument in writing, the Prothonotary shall be entitled to the fee of one shilling and no more, and for enregistering the same in a Register paraphé, (which it shall be his duty to keep for the purpose,) at the rate of three pence per hundred words, and no more, and at the same rate for certified copies thereof; and to which Register any and every person requiring it shall at all times, during office hours, have access gratis; and that the said fee and charges, and all costs and expenses of printing pursuant hereto, shall be taxed in each case at the lowest rate at which, consistently with justice, the same can be fixed, by some one or more of the Judges of the said Court before whom the proceeding is pending, and shall be defrayed by the parties commuting in equal proportions, unless it shall be otherwise stipulated by and between themselves in the Acte or agreement of commutation; but that all costs and charges upon, or incidental to, any claim upon such commutation money or indemnity, shall be at the expense of the claimant or of the Seignior or Proprietor having commuted as aforesaid, as to justice it shall appertain, and by the Court seized of the case it shall be awarded.

XII. And be it enacted, That if no hypothecary claim as aforesaid be, pursuant to the notice hereinbefore required to be given, presented and filed within the appointed time, a memorandum to that effect, shall be entered upon the aforesaid Register to be kept for the purpose, and the bond given as aforesaid (when such may have been the case) by such. Seignior or Proprietor, shall be discharged and deemed cancelled, and a memorandum to that effect be accordingly indorsed upon the same by the Prothonotary, and be in like manner entered upon the aforesaid Register and the proceeding shall thereby be closed; and it also shall be the duty of the Prothonotary to pay all monies that by any order or judgment of Court in any case within the meaning and provisions of this Act, shall be directed to be paid to any claimant, and to take the necessary receipts and discharges therefor, making mention of the same on the said Register, and of the respective dates thereof, for future reference thereunto in case of need, and for which service he shall be entitled to such compensation as shall be allowed by the Court.

XIII. And be it enacted, That from and after the filing as aforesaid of such Notarial agreement or instrument in writing, and deposit of the commutation money or indemnity agreed upon as aforesaid in the office, of the Prothonotary, the actual and every future owner (detenteur) of such land, the tenure whereof shall have been so commuted, and in like manner the land also, shall

thenceforward for ever cease to be liable or subject to any hypothecary claim of any and every description, created or caused by the Seigneur or Proprietor of the Seigniorie wherein such land is situate, or by any of his auteurs or predecessors having owned such Seigniorie.

XIV. And be it enacted, That whenever any rente constituée or rente foncière created under this Act between Seigneur and Seigneur, or between Seigneur and Censitaire shall be redeemed by actual payment, whether by operation of law and in a compulsory manner or by mutual agreement, as the case may be, such redemption shall become subject to the same deposit of the price or principal thereof in the Court of Queen's Bench as hereinbefore provided to protect the rights of third parties, and the same proceedings shall be had thereon at the diligence of the person having to pay the said price or principal: Provided always, that such rente constituée or rente foncière shall be considered in matters of succession and in judicial proceedings, and to all other intents and purposes whatever as being a territorial right attached to the domain of the Seigniorie, to the Seigneur or Proprietor of which it is payable, and shall not be liable to be transferred, seized, sold, alienated, hypothecated or mortgaged apart from the said Seigniorie, but shall form part of the same and shall also be transferred, seized, sold, alienated, hypothecated, mortgaged and otherwise legally dealt with, along with the said Seigniorie, and the register to be kept by the Seigniors as hereinafter mentioned shall be considered as one of the titles of the said Seigniorie.

XV. And be it enacted, That it shall be lawful for the several religious or ecclesiastical communities in Lower Canada, holding in mortmain Fiefs or Seigniories therein, to invest from time to time, as they shall see fit, in any lands or tenements in this Province, or in any public or private securities in the United Kingdom or in this Province, which they shall deem the most advisable or advantageous to their respective communities or corporations, any and every sum or sums of money that may accrue to them from any commutation made in pursuance of this Act.

XVI. And be it enacted, That any rent constituted (rente constituée) as the consideration for such commutation as aforesaid, shall be redeemable at the option of the land owner, by one payment, or as agreed upon, including all arrears, in cases where the Seigneur has the right of alienating such rent, and observing the formalities and requirements hereinbefore mentioned with respect to the ready payment for the liberation of all hypothecary claims; but if the seigniorie be entailed (substituée) or held in mortmain, or by a Corporation, or the commutation be made on the part of the Seigneur, by a tutor, curator, or administrator, the rent and arrears only shall be received, and the principal sum shall only become payable in the cases by law provided, or when the party to whom the rent is payable, shall have power of alienating the Seigniorie wherein it may be due: Provided always, that in all cases where the party with whom, as the Seigneur or as the representative of the Seigneur, the commutation is affected, shall not have the power of alienating any seigniorial right commuted, the commutation of such right shall be made for an annual rent, and not for a sum payable at once.

XVII. And be it enacted, That the commutation of any seigniorial right held in mortmain, or by any Corporation, shall be accompanied by the same formalities as the alienation of any immovable property of the same party would be; and tutors, curators, and administrators of any kind, shall be

thereunto authorized in the manner required by law to enable them to alienate the real property of the parties they represent; and the owners and possessors of any entailed seigniorial rights, the absolute property whereof is entailed on their children or descendants, born or to be born, or on the children or descendants, born or to be born of their collateral relatives, descendants of the party by whom the entail was created, or on other persons born or to be born, may commute such rights on an advice of relatives (*avis de parens*) duly homologated according to law; but if the absolute property of such rights be entailed on persons not descendants of the then possessor, then no such commutation shall be effected without the consent of a curator to the entail duly appointed in the usual form: Provided that in all cases mentioned in this section the commutation shall be made for an annual rent, and not otherwise.

XVIII. And be it enacted, That any person or persons representing any party holding in mortmain or any Corporation, and any tutor, curator or administrator, or the possessor of an entailed estate, who shall on account of any such commutation collusively receive for his or her advantage, or for that of any third party, any sum of money, promise or valuable consideration, over and above the rent stipulated, and any Seigneur in possession who in effecting any such commutation shall have assumed to alienate rights with regard to which he has no power of alienation, and shall under such pretence have received any principal sum for such commutation, when in fact such principal sum ought to have been received by some other party or converted into annual rent, such person or Seigneur may, on being legally convicted of such offence before any Court of competent jurisdiction, be condemned to pay a penalty equal to double the amount which he shall have so received collusively under such false pretence, and any possessor of any land en roture or censitaire, who shall collusively pay to any such person or Seigneur any sum of money in order to obtain any such commutation as aforesaid with intent to defraud any other party, may be condemned to a penalty equal to double the sum so received to be imposed in like manner by the Court before whom such offender shall have been convicted.

XIX. And be it enacted, That the Directors and Principals of any Community or Corporation holding estates in mortmain, and all curators, tutors and administrators, and all possessors of entailed estates, shall be bound to take all necessary precautionary measures for the conservation of any such rents as aforesaid in which the parties they represent may be interested; and in any case of compulsory redemption of such rent, shall be bound within one year thereafter to reinvest the principal sum in a secure and profitable manner, for the benefit of the Corporation or persons therein interested.

XX. And be it enacted, That whenever any such commutation shall have taken place, all arrears due on the property to which it relates, shall be held to be commuted and extinguished, unless the contrary be stipulated; and in the case last mentioned, or where such arrears shall be valued apart, or shall remain as a charge upon the property, the precise amount shall be ascertained and mentioned in the deed of commutation; but no such arrangement shall affect any arrears on any other property held by the same party: Provided also, that when any such commutation shall be effected on a part only of any land en roture or grant, a proportionate part of the arrears due on the whole, shall be held to be commuted and extinguished: Provided further, that when a part

only of any such land en roture or grant shall be so commuted, the Seigniorial charges and dues on the part uncommuted shall be proportionally reduced.

XXI. Provided also and be it enacted, - That nothing in this Act contained shall extend to affect any commutation of Tenure effected in any Seigniority held by the Ecclesiastics of the Seminary of Saint Sulpice, under the Ordinance in that behalf made and provided.

XXII. And be it enacted, That no commutation shall be effected for a part only of the Seigniorial rights affecting any property; but such commutation shall be in all cases full and perfect, so as to produce a change of Tenure as aforesaid.

XXIII. Provided always and be it enacted, That in cases where the parties, Seignior and Censitaire, may, without intending commutation of the tenure of any such land, be desirous only of transacting for the extinguishment of lods el ventes upon all future sales or mutations thereof, and of liberating such land from the liability therefor in time to come, it shall be lawful for them so to do, and to agree and stipulate by Acte before Notaries in this behalf, as they may be advised and think proper, the requirements of this Act, for preserving the right of others when payment of the indemnity or composition money agreed upon is made, being always duly observed.

XXIV. And be it enacted, That those who hold in mortmain, and Corporations, tutors, curators and administrators, possessing property held en roture, the tenure whereof may be commuted with advantage to those whom they represent, may effect such commutation by paying the consideration out of the monies of those whom they represent, or may validly bind them to the payment of the rent stipulated in the deed of commutation, provided they observe the formalities required bylaw in the alienation of the property of such parties holding in mortmain or Corporations, or of those whose rights such tutors, curators or administrators represent.

XXV. And be it enacted, That the Seignior shall keep a Register, in which shall be entered at full length, all deeds of commutation, and all receipts for principal sums received for the redemption of any. rent constituted, as the consideration of any commutation, and all judgments relating to any such commutation, with a proper index; and such Register shall be open to all persons at all seasonable times; and the Seignior, or the person in whose keeping such Register shall be, may demand six pence currency for each communication of any such Register; and copies of all entries in such Registers shall be delivered to any party interested, by the Seignior or his agent, on payment of three pence currency, for each hundred words; and such Register shall be held to be a public memorial made for the common benefit of the Seignior and his Censitaires, and placed in the keeping of the Seignior.

XXVI. And be it enacted, That all monies paid to the Receiver General under the authority of this Act, shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall be pleased to direct.